IN THE

Supreme Court of the United States

October Term, 1976
No. 76-1622

IN RE REINER INDUSTRIES, INC., DEBTOR.

MARCUS ROTTENBERG,
Petitioner,
vs.
IRVING SULMEYER, Trustee,
Respondent.

MARCUS ROTTENBERG,
Petitioner,
vs.
INTERNATIONAL FASTENER RESEARCH CORPORATION,
Respondent.

Respondent's Brief in Opposition to Petition for a Writ of Certiorari.

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Opinion Below.

There were two companion appeals heard by the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit decisions are included as Appendix B in Petitioner's Brief. The Petition for Writ of Certiorari appears directed only to the appeal wherein International Fastener Research Corporation was a Respondent (No. 75-2483). Accordingly, this opposing brief, submitted on behalf of Respondent International Fastener Research Corporation, is directed only to the Ninth Circuit decision in 75-2483.

Questions Presented.

1. Did the Court of Appeals commit error in rejecting Petitioner's argument that application of the Bankruptcy Act and Bankruptcy Rules violated his Due Process rights where: a) the Bankruptcy Act and Rules require that an appeal from a Bankruptcy Court order must be filed within ten days (unless extended); b) Petitioner waited until December 24, 1974 before appealing from a Bankruptcy Court order entered on July 30, 1974; and c) the District Court dismissed Petitioner's appeal as being untimely (which dismissal was affirmed by the Court of Appeals)?

2. Is the denial of a request for reconsideration an appealable order?

3. Have subsequent proceedings rendered the issues moot?

Statement of the Case.

Petitioner's statement of the case contains so many false and misleading statements as to what actually transpired, Respondent must necessarily set forth what the record indicates to be the true statement of the case.

In May, 1973, Reiner Industries, Inc. filed a petition under Chapter XI of the Bankruptcy Act and Irving Sulmeyer was duly appointed Receiver. Shortly thereafter, Petitioner loaned $350,000 to the Receiver and received two certificates of indebtedness. Each certificate provided in part that:

> "This certificate is . . . made a lien upon all property of . . . Reiner Industries, Inc. . . . *Said lien shall be subject to presently existing, valid and perfected security interests, trust deeds, liens and other encumbrances. . . .*" (Emphasis added.)

At the time of the issuance of the certificates, substantially all of the assets of Reiner Industries, Inc. were encumbered with blanket liens and security interests in favor of National Acceptance Company of California and A. J. Armstrong Co., Inc.; accordingly, Petitioner's liens were by the specific terms of the certificates junior to these particular secured creditors as well as certain other secured creditors.

Reiner Industries, Inc. was subsequently adjudicated a bankrupt. Thereafter the Trustee attempted to sell the business as a going concern. On July 2, 1974, a noticed hearing was held for the purpose of receiving bids for the assets of the business. The bids received were, in the view of the Bankruptcy Judge, inadequate. The Bankruptcy Judge then issued an order authorizing the Trustee to "sell said assets at private sale as expeditiously as possible, without further notice." Petitioner was represented by counsel at the July 2, 1974 hearing and was aware of the authorization to sell without further notice. Petitioner did not object to the waiver of further notice.

The Trustee then negotiated an agreement with Respondent whereby Respondent agreed to purchase most of the bankrupt's assets. The agreement provided among other things:

> "The purchase and sale . . . shall be consummated . . . on the first business day following the date upon which the order . . . approving the sale held pursuant to this Agreement becomes final . . . which shall not be later than July 23, 1974. *IFR* [Respondent] *shall have no obliga-*

tions under this Agreement unless the sale herein contemplated is approved by court order no later than July 12, 1974, and such *order becomes final for all purposes no later than July 23, 1974.*" (Emphasis added.)

By the time the details of the contract had been worked out, the Trustee determined he could no longer continue operations pending consummation of the sale. Since it was imperative that operations not be discontinued (because the going concern value would be severely damaged), the Trustee and Respondent agreed that Respondent would take possession of the assets in advance of closing provided Respondent assumed all expenses and obligations in connection with its operation of the business pending closing. Based on this understanding, the Trustee obtained an order of the Bankruptcy Court on July 12, 1974 approving all the terms of the contract of sale (including the condition that Respondent would have no obligations under the Agreement unless the Order became final for all purposes by July 23, 1974), and said order also authorized the Trustee to:

> ". . . deliver immediate possession of said assets . . . to the purchaser forthwith and . . . purchaser shall become responsible for all expenses and obligations in connection with its occupancy of said premises and its *use* of said assets and its *conduct of the bankruptcy estate's business conducted thereon.*" (Emphasis added.)

At the time of the July 12, 1974 order, National Acceptance Company of California and A. J. Armstrong Co., Inc. were owed close to $1,000,000. To avoid having to pay an additional ten days' interest

on these obligations, the Trustee persuaded Respondent to advance $1,000,000 to him so that he could pay off these secured creditors. The advance would ultimately be credited against the purchase price to be paid by Respondent when the July 12, 1974 order became final on July 23, 1974. To induce Respondent to advance the $1,000,000 prior to closing, the Trustee agreed with Respondent that it would be subrogated to the position of these secured creditors so that Respondent would be protected in the event that the sale was not consummated. In reliance upon this agreement, Respondent turned over $1,000,000 to the Trustee and the latter used substantially all of Respondent's money to pay off the secured creditors. As previously mentioned, the secured creditors, to whose positions, lien rights and priorities Respondent became subrogated by agreement with the Trustee, held liens which were senior to the liens created in Petitioner's certificates of indebtedness.

It is to be noted at this point that Petitioner erroneously states in his brief that on July 12, 1974 the sale to Respondent was fully consummated, relying largely upon the fact that Respondent had taken possession of the assets and paid $1,000,000 to the Trustee. This is totally misleading. As to Respondent taking possession of the assets, the July 12, 1974 order expressly authorized the Trustee to deliver immediate possession of the assets even though the sale was not to take place until July 23, 1974. The only condition was that Respondent assume responsibility for obligations incurred in "its conduct of the *bankruptcy estate's business*" during this interim period. As to the payment of $1,000,000 by Respondent to the Trustee, this merely was substitution of one secured creditor for another,

to-wit: Respondent, in place of the other secured creditors who were paid off. This was an interim measure to save the bankruptcy estate further interest expense while protecting Respondent if the sale did not close. Nowhere in the record or the decisions of the courts below is there any support for Petitioner's contention that the sale to Respondent was ever consummated.

On July 22, 1974 Kenneth Reiner, who is Petitioner's nephew and was the former president of the bankrupt, filed a notice of appeal from the July 12, 1974 order. The appeal prevented the July 12, 1974 order from becoming final. By the express terms of the contract of sale quoted above, Respondent had no obligations under the contract unless the order confirming the sale became final no later than July 23, 1974. Mr. Reiner's appeal thus entitled Respondent to rescind the contract.

Although Respondent was entitled to rescind the contract, the Trustee desired to consummate the sale if he could obtain a quick dismissal of the appeal. Accordingly the Trustee contacted Petitioner's California counsel, Allan J. Greenberg, and pleaded with him to try to have Petitioner prevail upon his nephew, Mr. Reiner, to dismiss the appeal and thereby save the sale. Counsel for Petitioner was unable to do so and it became apparent that Petitioner's nephew was intent upon prosecuting his appeal. Respondent was faced with the untenable prospect of purchasing assets for resale without clear title. Accordingly, Respondent rescinded the contract of sale on July 26, 1974. Had Petitioner been able to convince his nephew to dismiss his appeal, the sale to Respondent would have been consummated and subsequent proceedings would not have been necessary.

Since the sale to Respondent was never consummated, the Trustee was faced with having to dispose of the assets and applied to the Bankruptcy Court for an order authorizing the employment of an auctioneer. As mentioned earlier, the July 2, 1974 order authorized the Trustee to sell the assets as expeditiously as possible *without further notice or advertising*. Counsel for Petitioner was present at the hearing *and made no objection to the waiver of notice* with respect to future sales. On July 30, 1974, the Trustee applied for and obtained an order which authorized the Trustee, among other things, to sell the assets by auction through David Weisz Company. Said order also recognized Respondent's rescission of the contract of sale and the subrogation agreement between the Trustee and Respondent which was made on July 12, 1974. Not only did the Trustee advise Petitioner's counsel, Mr. Greenberg, that rescission was imminent unless Petitioner could persuade his nephew, Mr. Reiner, to dismiss the appeal, but more importantly, concurrently with their filing, the Trustee mailed a copy of the July 30, 1974 application and order to Mr. Greenberg. Moreover, the Trustee spoke to Mr. Greenberg within a few days after the July 30, 1974 order was entered and discussed with him the pending auction by the David Weisz Company. (Respondent does wish to point out to the Court that the Ninth Circuit Court of Appeals recognized that there was some dispute as to the extent of Petitioner's notice and assumed, *for purposes of its decision only*, that Petitioner received no notice of the July 30, 1974 order within the statutory time for appeal.)

In any event, by Petitioner's own admission, he was aware of the July 30, 1974 order by August

30, 1974. This was still more than ten days before the auction sale was due to take place. Petitioner or his counsel could have contacted the Trustee or Respondent and informed them of Petitioner's objection to the July 30, 1974 order; this would have afforded the Trustee and Respondent an opportunity to evaluate the advisability of halting the auction sale, thereby preserving the status quo pending a determination of Petitioner's contentions.

Petitioner applied to the Bankruptcy Court for reconsideration of the July 30, 1974 order and a hearing on Petitioner's application for reconsideration was set for November 8, 1974. By the time the Trustee and Respondent were served with copies of Petitioner's application for reconsideration, the auction sale had already taken place and the Respondent had taken irrevocable steps in reliance upon the finality of the July 30, 1974 order.

On December 18, 1974 the Bankruptcy Court entered an order refusing to reconsider the July 30, 1974 order. A copy of the December 18, 1974 order is included herein as Appendix A.

On December 24, 1974 Petitioner filed a notice of appeal to the District Court seeking review of the July 30, 1974 order and also the December 18, 1974 order.

Respondent filed a motion with the United States District Court to dismiss Petitioner's appeals. With respect to Petitioner's appeal from the July 30, 1974 order, Respondent contended that the same was not filed within the time period prescribed by the Bankruptcy Act and Rules promulgated thereunder. With respect to Petitioner's appeal from the December 18, 1974 order, Respondent contended that an order which refuses to reconsider a prior order on the merits is not an appealable order. The District Court concurred with Respondent and dismissed both of Petitioner's appeals.

Petitioner thereafter appealed to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit affirmed the dismissals. (See Petitioner's Appendix B.)

REASONS FOR DENIAL OF PETITION.

THE DECISION OF THE COURT OF APPEALS WAS CORRECT AND THERE ARE NO SPECIAL OR IMPORTANT REASONS REQUIRING REVIEW BY THIS COURT.

A. The Lower Courts Correctly Found That Petitioner Did Not Make a Timely Appeal From the July 30, 1974 Order.

Petitioner did not file his appeal from the July 30, 1974 order until December 24, 1974. The Rules of Bankruptcy Procedure continued the rule formerly embodied in 11 U.S.C. §67(c) that an order becomes final ten days after the entry thereof. The relevant portion of Rule 802(a) states:

> "The notice of appeal shall be filed with the referee within ten days of the date of the entry of the judgment or order appealed from. . .".

Rule 803 provides:

> "Unless a notice of appeal is filed as prescribed by Rules 801 and 802, the judgment or order of the referee shall become final."

The Advisory Committee's Note to this Rule states:

> "This rule preserves the finality of the referee's order on the expiration of the period allowed seeking review, as now provided in §39c of the Act."

Rule 922(a) states:

> ". . . Lack of notice of the entry [of an order] does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 802."

The foregoing establishes that under the Rules of Bankruptcy Procedure an order becomes final for all purposes after the expiration of the ten-day period.

Petitioner contends that he was entitled to notice of the July 30, 1974 order, that he did not receive notice thereof and that the time bar of 11 U.S.C. §67(c) and Rule 802 of the Rules of Bankruptcy Procedure, violates his constitutional rights of due process.

With respect to whether or not Petitioner was entitled to notice of the July 30, 1974 order authorizing the sale, the Ninth Circuit correctly held that Petitioner waived his right to notice. (See Petitioner's Appendix B at 15a.) Specifically, Petitioner was represented by counsel at a hearing before the Bankruptcy Court on July 2, 1974 whereat the Court determined that the offers received at that hearing were inadequate and authorized the Trustee to dispose of the bankrupt's assets without further notice or advertising. Petitioner did not object to the waiver of notice as announced by the Court. Therefore, Petitioner was not entitled to notice of the July 12, 1974 order authorizing the sale agreement to Respondent. Likewise, the Court reasoned, Petitioner was not entitled to notice of the rescission of the sale agreement and authorization of further sale which was a topic of the July 30, 1974 order to which Petitioner takes exception.

Moreover, the Ninth Circuit correctly found that Petitioner was, by his own admission, aware of the July 30, 1974 order at least ten days before the auction sale authorized by that order took place; yet Petitioner failed to file his objection thereto until the day before the auction and the parties involved in the sale were

not notified until after the sale took place. The Court found that under such circumstances, Petitioner should be estopped from asserting his lack of notice. (See Petitioner's Appendix B at 15a.)

With respect to Petitioner's contention that his due process rights were violated, the Ninth Circuit assumed *arguendo, for purposes of its decision only,* that Petitioner had a vested property right which was affected by the July 30, 1974 order and that Petitioner did not receive notice of said order within the statutory appeal period. The Court properly held that due process only requires a reasonable procedure be followed when rights are affected. The Court correctly relied upon the decisions holding that each individual creditor with notice of a bankruptcy proceeding must keep track of those proceedings by constantly checking the record in order to ensure that any order which affects him is properly challenged. The Court held that in the bankruptcy context it is reasonable, in terms of due process, to require a creditor to keep himself informed of the state of the proceedings. *In re St. Cloud Tool & Die Co.*, 553 F.2d 387 (8th Cir. 1976); *In re General Insecticide Co., Inc.*, 403 F.2d 629 (2d Cir. 1968). The ten-day limit for appeals promotes the finality of bankruptcy orders. *In re Abilene Flour Mills Co., Inc.*, 439 F.2d 937 (10th Cir. 1971); *St. Regis Paper Co. v. Jackson,* 369 F.2d 136 (5th Cir. 1966). Without such finality, title to the property of the bankrupt would be clouded and it would be difficult for the Trustee to liquidate the estate for the benefit of all creditors. (See Petitioner's Appendix B at 14a.)

In summary, the Ninth Circuit correctly concluded that Petitioner waived his right to notice and, upon the record, should be held to be estopped from asserting lack of notice. The Court moreover concluded that the procedures prescribed by the Bankruptcy Act and Rules promulgated thereunder did not, in the context of a bankruptcy proceeding, violate Petitioner's due process rights. (See Petitioner's Appendix B at 15a.)

Petitioner's brief also characterizes the July 30, 1974 order as *creating* lien rights in favor of Respondent having priority over those of Petitioner. It should be pointed out that Petitioner advanced this proposition in the lower courts, yet there is nothing in the record to support this contention. Respondent's lien rights were created by agreement between the Trustee and Respondent on July 12, 1974 when Respondent advanced $1,000,000 to the Trustee for the purpose of enabling him to pay off certain secured creditors and halt further accrual of interest against the estate. This was done upon the understanding and agreement that Respondent would "step into the shoes" of those secured creditors who were paid with Respondent's money pending consummation of the sale to Respondent. This was merely a contractual substitution of one secured creditor in place of another. This in no manner affected Petitioner's lien priorities and thus Petitioner's property rights were in no manner affected. The July 30, 1974 order merely noted what had already taken place.

B. The Court of Appeals Was Correct in Affirming the Dismissal of Petitioner's Appeal From the December 18, 1974 Order Denying Reconsideration.

Petitioner sought to have the July 30, 1974 order reconsidered by the Bankruptcy Court. The Court entered an order on December 18, 1974 denying reconsideration. [See Appendix A herein.]

The issue presented to the District Court and the Ninth Circuit was whether the December 18, 1974 order was appealable. There is some authority that if a judge undertakes to reconsider a prior order *on the merits,* the order entered thereupon may be appealable. However, if the judge refuses to reconsider the order *on the merits,* the denial of such a motion for reconsideration is not appealable. *Wayne United Gas Co. v. Owens-Illinois Glass Co.,* 300 U.S. 131, 137-38 (1937); *In re Brendan Reilly Associates, Inc.,* 372 F.2d 235 (2d Cir. 1967). See 2A Collier on Bankruptcy, ¶39.17 at 1487 (14th Ed. 1974). Petitioner contends that although the form of the December 18, 1974 order indicated that the Bankruptcy Judge simply denied his motion, he actually undertook to re-examine the merits of his July 30, 1974 order by taking evidence concerning that order. Petitioner would have this Court believe that the Bankruptcy Judge's ruling was embodied in the letter dated November 14, 1974 included in Petitioner's brief in Appendix A. This is simply not true. This letter was not the court's order. Rather, reference must be had to the language of the December 18, 1974 order for it is the form of this order which determines whether the same constituted a reconsideration of the earlier order. *Pfister v. Northern Illinois Finance Corp.,* 317 U.S. 144, 150-51 (1942). A copy of the December 18, 1974 order denying reconsideration is included herein as Appendix A.

A review of said December 18, 1974 order clearly indicates that the Bankruptcy Judge refused to reconsider Petitioner's motion on the merits. Petitioner would have this Court believe that notwithstanding the language of said December 18, 1974 order, the Judge was somehow tricked into signing the wrong order.

Included herein as Appendix B is a copy of a letter from the Bankruptcy Judge dated December 18, 1974. There was considerable comment and objection by counsel for Petitioner and Respondent in connection with the form that the proposed order would take and it is clear from this December 18, 1974 letter that the Bankruptcy Judge was in no manner tricked or misled. Based upon the record the Ninth Circuit correctly found that the Judge knew precisely what he was doing by not reaching the merits. (See Petitioner's Appendix B at 16a.)

C. Even Assuming Petitioner Was Not Time-Barred From Appealing the July 30, 1974 Order and Assuming That the December 18, 1974 Order Was Appealable, the Questions Are Now Moot.

In connection with the court-approved sale, as authorized by the July 30, 1974 order, the issue is now moot inasmuch as the sale has already taken place. Rule 805 of the Rules of Bankruptcy Procedure provides in pertinent part:

> ". . . unless an order approving a sale of property . . . is stayed pending appeal, the sale to a good faith purchaser . . . shall not be affected by the reversal or modification of such order

on appeal, whether or not the purchaser . . . knows of the pendency of the appeal."

Petitioner did not obtain a stay of the auction sale and the same took place. Consequently any subsequent reversal of the July 30, 1974 order could not affect the sale. Moreover, practically speaking, there is no way that the multitude of purchasers at the auction could be required to return the assets bought by them. Therefore, the questions raised by Petitioner relative to the propriety of the sale authorized by the July 30, 1974 order are moot.

With respect to the lien priorities of Respondent, even assuming that the July 30, 1974 order improperly recognized the subrogation agreement between the Trustee and Respondent which was entered into on July 12, 1974, Petitioner subsequently waived his rights to attack Respondent's lien rights.

Specifically, Respondent initiated an adversary proceeding against the Trustee to enforce its lien rights which emanated out of the July 12, 1974 agreement with the Trustee and confirmed by the Bankruptcy Court on July 30, 1974. Respondent sought permission from the Bankruptcy Court to have certain assets subject to its liens turned over to Respondent and to foreclose its liens on other assets. Petitioner intervened and was a party to said adversary proceeding.

A judgment and order was entered by the Bankruptcy Court on February 27, 1975, granting Respondent leave to foreclose and ordering a turnover of certain assets. At the time said order was entered, the obligations owing to Respondent had been reduced to $408,-682.78. A copy of the February 27, 1975 order is included herein as Appendix C. A complete reading

of said order clearly demonstrates that the same contemplated that Respondent had a first lien upon the assets of the bankruptcy estate senior to Petitioner's liens.

Petitioner then filed a timely notice of appeal from said February 27, 1975 order. However, Petitioner did not pursue his appeal and by reason thereof, the District Court entered an order dismissing Petitioner's appeal for failure to prosecute. Thus, Respondent's senior lien status was reaffirmed by the Bankruptcy Court on February 27, 1975 and Petitioner is bound by this determination under principles of *res judicata*. Therefore, in view of said February 27, 1975 order, whatever might be said relative to the July 12, 1974 subrogation agreement between the Trustee and Respondent (which was acknowledged by the Bankruptcy Court in its July 30, 1974 order) Petitioner's challenge in relation thereto is moot in view of the subsequent February 27, 1975 order which is unassailable.

Conclusion.

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

IRWIN R. BUCHALTER,

Attorney for Respondent, International Fastener Research Corporation.

BUCHALTER, NEMER, FIELDS & CHRYSTIE.

APPENDIX A.

Denial of Application to Reconsider Order of July 30, 1974.

United States District Court, Central District of California.

In the Matter of Reiner Industries, Inc., Bankrupt. No. 73-05066.

Filed: Dec. 18, 1974.

1. On July 30, 1974, this Court made and entered its Order entitled "ORDER DECLARING RESCISSION OF PRIVATE SALE, AUTHORIZING SALE AT PUBLIC AUCTION AND AUTHORIZING AGREEMENT TO COLLECT ACCOUNTS RECEIVABLE AND SELL FINISHED GOODS IN THE ORDINARY COURSE OF BUSINESS."

2. Said July 30, 1974 Order became final on August 10, 1974.

3. On September 9, 1974, MARCUS ROTTENBERG ("ROTTENBERG") made application to this Court seeking reconsideration of said July 30, 1974 Order.

4. A hearing was held before this Court on November 8, 1974 to determine whether or not this Court should reconsider said July 30, 1974 Order.

5. After hearing oral arguments and reviewing the pleadings and briefs on file herein, it appears to this Court that said July 30, 1974 Order should not be reconsidered.

THEREFORE, this Court hereby denies the application of ROTTENBERG and shall not reconsider said July 30, 1974 Order.

The attorneys for International Fastener Research Corporation shall serve copies of this ruling upon the attorneys of record for ROTTENBERG and the TRUSTEE.

At Los Angeles in said District on this 18th day of December, 1974.

/s/ Howard V. Calverley
HOWARD V. CALVERLEY
Bankruptcy Judge

APPENDIX B.

December 18, 1974

Presiding Bankruptcy Judge

Mr. Allan J. Greenberg
Attorney at Law
1880 Century Park East, Suite 1400
Los Angeles, California 90067

Mr. David W. Levene
Attorney at Law
727 West Seventh Street
Los Angeles, California 90017

Re: Reiner Industries, Inc.
Bankruptcy No. 73-05066

Gentlemen:

I have studied the "Denial of Application to Reconsider Order of July 30, 1974" submitted by Mr. Levene in the above-entitled case and the objection thereto filed by Mr. Greenberg.

I have this day signed the "Denial of Application to Reconsider Order of July 30, 1974" as submitted by Mr. Levene because I think it reflects the Court's action better than the Proposed Order of Mr. Greenberg.

As I recall, there was no hearing on the question of whether or not the Court's Order of July 30, 1974 should be reconsidered on October 22, 1974. The hearing on that day was confined to the relative priority between the Trustee's operating expenses and Rottenberg's Receiver's certificates. It was at that hearing that both Mr. Sulmeyer, the trustee, and Mr. Greenberg testified. Hearing on the question of the Court's recon-

sideration of the Order of July 30, 1974 was held on November 8, 1974.

I don't remember that any testimony was given on the question of reconsideration of the order involved. This matter was submitted on the record of the case and was argued at length.

I see no reason to recite the affidavits considered in the order itself. They are a part of the record of the case.

Yours very truly,
HOWARD V. CALVERLEY
Presiding Bankruptcy Judge

HVC/st

APPENDIX C.

Order Granting Leave to Foreclose and Ordering Turnover of Funds.

United States District Court, Central District of California.

In re Reiner Industries, Inc., Bankrupt. International Fastener Research Corporation, Plaintiff, vs. Irving Sulmeyer, Trustee, Defendant. Bankruptcy No. 73-05066.

Filed: Feb. 27, 1975.

This matter came on for hearing before the undersigned Bankruptcy Judge on February 18, 1975, at 2:00 o'clock P.M., pursuant to the Complaint of International Fastener Research Corporation (hereinafter referred to as "IFR") and the Summons and Notice of Trial issued pursuant thereto and also pursuant to the Order dated February 15, 1975, permitting Marcus Rottenberg to intervene. The Trustee in Bankruptcy, Irving Sulmeyer, having appeared personally and having been represented by and through his counsel of record, Haskell H. Grodberg, IFR having appeared by and through its attorneys of record, Buchalter, Nemer, Fields & Savitch, a Professional Corporation, by Irwin R. Buchalter and Jerry Nemer, and Marcus Rottenberg having appeared by and through his attorney of record, Allan J. Greenberg, and it appearing that due notice of said hearing was given, and based upon the representations made in open Court by the Trustee that he has no defense to the Complaint and has no objections to permitting foreclosure and turnover upon the conditions which IFR indicated were agreeable and acceptable to it, and based upon the representations of IFR as to the terms and conditions of turnover and foreclosure to which it has no objection, it appear-

ing that those terms and conditions are in substantial respects beneficial to the bankrupt's estate, findings of fact and conclusions of law not being required as no evidence was produced by way of the parties but nevertheless having been waived by the Trustee and IFR, and further based upon the Trustee and IFR agreeing in open Court that this Order being entered herein will be without prejudice to the rights of Marcus Rottenberg, and other good cause appearing therefor, IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. IFR through its attorneys, Buchalter, Nemer, Fields & Savitch, a Professional corporation (hereinafter referred to as "BNF&S"), shall continue its efforts to collect remaining outstanding accounts receivable created either during the period of the Chapter XI proceeding or the superseding bankruptcy proceeding. Pursuant to the prior order of this Court authorizing Trustee to employ special counsel, said collection effort shall be without expense to the Trustee or IFR for attorneys' fees. The only deduction made from the amount collected shall be the actual costs expended by IFR in connection with said collection effort. The exact funds collected from those efforts to date (which are approximately $35,000.00) shall be credited by IFR in reduction of the bankrupt's estate current secured indebtedness to IFR which is deemed to be $408,-682.78. All future collections shall be similarly delivered by BNF&S to IFR, in reduction of said indebtedness.

Said collection effort by BNF&S shall continue for a period of ninety days. Within ten days thereafter, BNF&S shall account to the Trustee herein for the gross amount collected, the costs and expenses incurred in such collection, and the net amount of such collections turned over to IFR. At the same time IFR shall cause to be delivered to the Trustee a list of the remaining accounts and the invoices and other documents which may be in the possession of IFR substantiating the remaining accounts, which such accounts shall thereupon be deemed to be vested in the Trustee herein free and clear of any claim or lien of IFR and the Trustee herein shall be free to either pursue said accounts enough to collect the same or take such other action with respect thereto as he deems appropriate and in the best interest of creditors.

2. From the funds presently in the bankruptcy estate, the Trustee shall forthwith deliver and pay to IFR the sum of $130,000.00, in further reduction of the indebtedness of the bankruptcy estate to IFR.

3. IFR be and hereby is authorized to proceed forthwith to foreclose upon all of the bankruptcy estate's right, title and interest in and to any and all trademarks, trade names, licenses, patents, patents pending, and designs which have not previously been sold, including but not limited to patents, patents pending, designs, and licenses relating to the Klippie line and the use of the name Klippie and any and all jigs, tools, dies, raw materials, work in process, scrap, supplies and

inventory still remaining in the bankruptcy estate. Said foreclosure may be either by public or private sale conducted pursuant to the Uniform Commercial Code as adopted in the State of California, provided, however, that upon completion of such foreclosure, IFR shall credit against the balance then owing to it from the bankruptcy estate the sum of $100,000.00, or the net amount realized by IFR from said foreclosure, whichever sum is greater.

4. IFR shall retain its presently existing liens on the assets of the bankruptcy estate to the same extent and with the same priority as it presently holds same to secure the balance still owing to it by the bankruptcy estate, which said liens include but are not limited to a lien upon that certain real property, the description of which is set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The Trustee herein shall use his best efforts to cause said real property to be sold within one year from the date of this order. In the event said real property is sold, the first proceeds therefrom, after the direct expenses of sale and payment of taxes entitled to priority, if any, shall be paid by the Trustee to IFR concurrently with such sale in an amount sufficient to satisfy in full the balance then owing to IFR and in satisfaction of IFR's lien against said real property. In the event the Trustee cannot sell the real property within said one year period, IFR is and shall be entitled to proceed to foreclose upon said real property pursuant to the laws of the State of California.

This Order is entered without prejudice to the rights of Marcus Rottenberg or any other rights of IFR not specifically provided for herein.

At Los Angeles, California, in said District this 27th day of February, 1975.

/s/ Howard V. Calverley
HOWARD V. CALVERLEY
Bankruptcy Judge

Approved as to Form and Substance:
Irving Sulmeyer, Trustee
INTERNATIONAL FASTENER RESEARCH CORPORATION

By
of Buchalter, Nemer, Fields & Savitch

Disapproved

/s/ Allan J. Greenberg
ALLAN J. GREENBERG,
Attorney for Marcus Rottenberg

EXHIBIT "A"

[Exhibit "A" is merely a legal description of real property and is omitted for brevity.]

APPENDIX D.

STATUTES:

11 U.S.C. 67c

c. A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court upon petition filed within such ten-day period may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing. Such petition shall set forth the order complained of and the alleged errors in respect thereto. Unless the person aggrieved shall petition for review of such order within such ten-day period, or any extension thereof, the order of the referee shall become final. Upon application of any party in interest, the execution or enforcement of the order complained of may be suspended by the court upon such terms as will protect the rights of all parties in interest.

BANKRUPTCY RULES:

Rule 802(a)

(a) *Ten-Day Period.* The notice of appeal shall be filed with the referee within 10 days of the date of the entry of the judgment or order appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires.

Rule 803

Unless a notice of appeal is filed as prescribed by Rules 801 and 802, the judgment or order of the referee shall become final.

Rule 805

A motion for a stay of the judgment or order of a referee, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be made in the first instance to the referee. Notwithstanding Rule 762 but subject to the power of the district court reserved hereinafter, the referee may suspend or order the continuation of proceedings or make any other appropriate order during the pendency of an appeal upon such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by the referee, may be made to the district court, but the motion shall show why the relief, modification, or termination was not obtained from the referee. The district court may condition the relief it grants under this rule upon the filing of a bond or other appropriate security with the referee. A trustee or receiver may be required to give a supersedeas bond or other appropriate security in order to obtain a stay when taking an appeal. Unless an order approving a sale of property or issuance of a certificate of indebtedness is stayed pending appeal, the sale to a good faith purchaser or the issuance of a certificate to a good faith holder shall not be affected by the reversal or modification of such order on appeal, whether or not the purchaser or holder knows of the pendency of the appeal.

Rule 922(a)

(a) *Judgment or Order of a Referee.* Immediately upon the entry of a judgment or order made by him, the referee shall serve a notice of the entry by mail in the manner provided by Rule 705 upon any party who opposed the making of the judgment or order and on such other persons as may be designated by

the referee. The service of such notice shall be noted in the referee's docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 802.